UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRUSTEES OF THE DRYWALL TAPERS AND POINTERS LOCAL UNION NO. 1974 BENEFIT FUNDS,

Plaintiffs,

-against-

AARCO RESTORATION AND CONSTRUCTION SERVICES INC. and AARCO ENVIRONMENTAL SERVICES CORP.,

Defendant.

Index No.: 16-CIV-8894

COMPLAINT

Plaintiffs, Trustees of the Drywall Tapers and Pointers Local Union No. 1974 Benefit Funds (hereinafter referred to as the "Funds") by their attorneys Barnes, Iaccarino, & Shepherd, LLP allege as follows:

NATURE OF THE ACTION AND JURISDICTION AND VENUE

1. This is a civil action based on the provisions of Section 301 of the Labor Management Relations Act of 1947 (hereinafter referred to as the "Taft-Hartley Act") 29 U.S.C. Section 185, and on Section 502(a)(3) and Section 515 of the Employee Retirement Income Security Act, as amended (hereinafter referred to as "ERISA") (29 U.S.C. Section 1132(a)(3) and 29 U.S.C. 1145).

2. Jurisdiction is conferred upon this Court by Section 301 of the Taft-Hartley Act (29 U.S.C. Section 185) and Sections 502(e)(1) and 502(f) of ERISA (29 U.S.C. Sections 1132(e)(1) and 1132(f)); and derivative jurisdiction is contained in 28 U.S.C. Sections 1331 and 1337.

3. Venue properly lies in this District under the provisions of 502(e)(2) of ERISA (29 U.S.C. Section 1132(e)(2)) and Section 301 of the Taft-Hartley Act (29 U.S.C. Section 185) and 28 U.S.C. Section 1391(b).

4. This action is brought by the respective Trustees of the Funds in their fiduciary capacities for monetary damages and other equitable relief under ERISA and for breach of a labor contract to secure performance by an Employer of specific statutory and contractual obligations to submit the required monetary contributions, and/or reports to the Plaintiffs. This complaint alleges that by failing, refusing or neglecting to pay and submit the required monetary contributions and reports to the Funds and Union when due, Defendants violated their Trade Agreement, respective trust agreements of the Funds, the Taft-Hartley Act, and ERISA.

PARTIES

5. The Plaintiffs' Trustees are, at all relevant times, the fiduciaries of jointly administered, multi-employer, labor management trust funds as defined by Section 3(21)(A) and Section 502(a)(3) of ERISA (29 U.S.C. Sections 1002(21)(A) and 1132(a)(3)). The Funds are established and maintained by the Drywall Tapers and Pointers of Greater New York Local Union 1974, IUPAT, AFL-CIO (hereinafter referred to as the "Union") and various Employers pursuant to the terms of the Trade Agreements in accordance with Section 302(c)(5)(1) of the Taft-Hartley Act (29 U.S.C. Section 186 (c)(5)). The Funds are employee benefit plans within the meaning of Sections 3(1), 3(2), 3(3) and 502(d)(1) of ERISA (29 U.S.C. Sections 1002 3(1), 3(2), 3(3) and 1132(d)(1)), and multi-employer plans within the meaning of Sections 3(37) and 515 of ERISA (29 U.S.C. Sections 1002(37) and 1145). Plaintiffs are Trustees of the Funds and the "plan sponsor" within the meaning of Section (3)(16)(B)(iii) of ERISA (29 U.S.C. Section 1002(16)(B)(iii)).

6. The Funds provide fringe benefits to eligible employees, retirees and their dependents on whose behalf the Defendants are required to contribute to the Funds pursuant to its Trade Agreement (hereinafter referred to as the "Agreement") between the Defendants and the Union. The Funds are authorized to collect contributions on behalf of the employees of the Defendants, and the Plaintiffs'

Trustees as fiduciaries of the Funds are authorized to maintain suit as independent legal entities under Section 502(d)(1) of ERISA (29 U.S.C. Section 1132(d)(1)) and are obligated to bring actions to enforce the provisions of the Agreement and the respective trust agreements of the Funds that concern the protection of employee benefit rights.

7. The Funds' principal office is located and administered at 265 West 14th Street, New York, New York 10011 in the County of New York.

8. The Union is a labor organization within the meaning of Section 301 of the Taft-Hartley Act (29 U.S.C. Section 185) which represents employees in an industry affecting commerce as defined in Section 501 of the Taft-Hartley Act (29 U.S.C. Section 142), and Section 3(4) of ERISA (29 U.S.C. Section 1002(4)), and as further defined in Section 12 of the General Associations Law of the State of New York.

9. The Union maintains an office and is administered at 265 West 14th Street, New York, New York 10011 in the County of New York.

10. Upon information and belief, the Defendant, AARCO Restoration and Construction Services Inc., (hereinafter referred to as "AARCO RESTORATION") at all relevant times was and is an "employer" within the meaning of Sections 3(5) and 515 of ERISA (29 U.S.C. Sections 1002 (5) and 1145) and was and still is an employer in an industry affecting commerce within the meaning of Section 301 of the Taft-Hartley Act (29 U.S.C. Section 185)

11. Upon information and belief, AARCO RESTORATION was and is a for profit domestic corporation duly organized and existing pursuant to the laws of the State of New York with their principal place of business at 50 Gear Avenue, Lindenhurst, NY 11757, in the County of Suffolk.

12. Upon information and belief, the Defendant, AARCO Environmental Services Corp., (hereinafter referred to as "AARCO ENVIRONMENTAL") at all relevant times was and is an "employer" within the meaning of Sections 3(5) and 515 of ERISA (29 U.S.C. Sections 1002 (5) and 1145) and was and still is an employer in an industry affecting commerce within the meaning of Section 301 of the Taft-Hartley Act (29 U.S.C. Section 185).

13. Upon information and belief, AARCO ENVIRONMENTAL was and is a for profit domestic corporation duly organized and existing pursuant to the laws of the State of New York with their principal place of business at 50 Gear Avenue, Lindenhurst, NY 11757, in the County of Suffolk.

BACKGROUND

14. Upon information and belief and at all relevant times, AARCO RESTORATION executed an Agreement with the Union and/or was and still is a party to an Agreement with the Union, with respect to which the Funds are third-party beneficiaries.

15. The Agreement required AARCO RESTORATION to make contributions to the Funds for work performed within the trade and geographical jurisdiction of the Union.

16. The Agreement further required AARCO RESTORATION to submit reports to the Funds and to furnish its books and records when requested by the Funds for the purpose of conducting an audit to ensure compliance with required benefit fund contributions.

17. Upon information and belief, AARCO RESTORATION and AARCO ENVIRONMENTAL have had and/or currently have affiliated business enterprises at all times relevant to this action.

18. Upon information and belief, AARCO RESTORATION and AARCO ENVIRONMENTAL have interrelated operations, common ownership and management, centralized control of labor relations, share assets, large transfers of monies, offices, payroll, similar or same

business purpose, operations, equipment, customers, employees, and performed work within the trade and geographical jurisdictions of the Union. Accordingly, AARCO RESTORATION and AARCO ENVIRONMENTAL constitute a single employer and/or are alter egos and their employees constitute a single bargaining unit, and are both bound to the Agreement.

19. Upon information and belief, AARCO ENVIRONMENTAL aided AARCO RESTORATION in evading its contractual obligations to Plaintiffs.

20. Upon information and belief, AARCO ENVIRONMENTAL aided AARCO RESTORATION by performing work within the trade and geographic jurisdiction of the Union without conforming to the terms of the Agreement. Accordingly, Defendant AARCO ENVIRONMENTAL is an alter ego and/or single employer of AARCO RESTORATION and is bound by the terms of the Agreement.

21. Upon information and belief, AARCO RESTORATION has an ownership, stock, equitable or managerial interest in Defendant AARCO ENVIRONMENTAL.

22. Upon information and belief, at all times material hereto, AARCO RESTORATION has ownership interest and/or control in AARCO ENVIRONMENTAL and all share employees and possibly same addresses and telephone numbers at some time during the course of their existence.

23. Upon information and belief, the Defendants are related through family members and/or company employees.

24. Accordingly, AARCO RESTORATION and AARCO ENVIRONMENTAL are both parties to the Agreement, bound by their terms and jointly and severally liable for each other's obligations under the Agreement.

CAUSES FOR RELIEF

AS AND FOR A FIRST CLAIM FOR RELIEF (PLAINTIFFS' CLAIM FOR BREACH OF CONTRACT AGAINST DEFENDANTS)

25. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "24" of this Complaint, as if fully set forth herein.

26. The Agreement requires AARCO RESTORATION to submit contribution reports setting forth the hours and the period that each of its employees worked and the amount of contributions due pursuant to the rate schedules set forth in the Agreement for all work performed by its employees covered by the Agreement and to purchase benefit stamps or contributions in a timely fashion in accordance with the Agreement.

27. Upon information and belief, pursuant to the Agreement, the Funds' Auditors conducted an audit of AARCO RESTORATION'S books and records and was also provided the books and records of AARCO ENVIRONMENTAL.

28. As a result of the audit covering the period of May 2, 2012 through December 31, 2014, AARCO RESTORATION and AARCO ENVIRONMENTAL owe benefit contributions to the Funds in the minimum amount of $44,641.30.

29. AARCO RESTORATION and AARCO ENVIRONMENTAL have failed and refused to remit to the Funds benefit contributions due and owing under the Agreement for the period May 2, 2012 through December 31, 2014 in the minimum amount of $44,641.30.

30. AARCO RESTORATION'S and AARCO ENVIRONMENTAL'S failure, refusal or neglect to remit the contributions to the Plaintiffs constitutes a violation of the Trade Agreement between AARCO RESTORATION and the Union wherein the Funds are third-party beneficiaries.

31. Accordingly, AARCO RESTORATION and AARCO ENVIRONMENTAL are liable to Plaintiffs for contributions in the minimum amount of $44,641.30 for the period May 2, 2012 through December 31, 2014, plus interest, liquidated damages, auditors' fees, attorneys' fees, court costs and expenses and all monies found due and owing by Defendants.

AS AND FOR A SECOND CLAIM FOR RELIEF
(PLAINTIFFS' CLAIM FOR ERISA OBLIGATIONS AGAINST DEFENDANTS)

32. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "31" of this Complaint as if fully set forth at length herein.

33. Section 515 of ERISA, (29 U.S.C. Section 1145) requires employers to pay fringe benefit contributions in accordance with the terms and conditions of the Agreement.

34. AARCO RESTORATION and AARCO ENVIRONMENTAL have failed to pay or timely pay the fringe benefit contributions to Plaintiffs owed as a result of work performed by individual employees as determined by an audit of the books and records. Such failure to make timely payment constitutes a violation of Section 515 of ERISA (29 U.S.C. Section 1145)

35. Section 502 of ERISA (29 U.S.C. Section 1132) provides that upon a finding of an employer violation of Section 515 of ERISA (29 U.S.C. Section 1145) which requires employers to pay fringe benefits contributions in accordance with the terms and conditions of collective bargaining agreements, the Court shall award payment to a plaintiff fund the unpaid fringe benefit contributions, plus statutory damages and interest on the unpaid principal amount due both computed at a rate set forth in the Agreement, together with reasonable attorneys' fees and costs and disbursements incurred in the action.

36. The failure to pay has injured the Funds and Union by delaying the investment of contributions and causing unnecessary administrative costs for the Funds and the Union and may injure the participants and beneficiaries and other contributing employers of the benefit plan in the form of lower benefits and higher contribution amounts.

37. Accordingly, AARCO RESTORATION and AARCO ENVIRONMENTAL are liable to Plaintiffs under the Agreement concerning the payment of fringe benefit contributions and under Sections 502 and 515 of ERISA (29 U.S.C. Sections 1132 and 1145) due to the failure to pay contributions when they are due.

38. Accordingly, AARCO RESTORATION and AARCO ENVIRONMENTAL are liable to the Funds in the minimum principal amount of $44,641.30 for the period May 2, 2012 through December 31, 2014, plus liquidated damages, interest, reasonable attorneys' fees, auditor's fees, court costs and disbursements incurred in this action pursuant to Section 502 of ERISA (29 U.S.C. Section 1132).

AS AND FOR A THIRD CLAIM FOR RELIEF
(AGAINST ALL DEFENDANTS)

39. Plaintiffs repeat, reiterate and re-allege each and every allegation contained in Paragraphs "1" through "38" of this Complaint as if set forth at length herein.

40. Pursuant to ERISA and the Agreement, the Defendants are required to timely submit current fringe benefit contributions and reports to Plaintiffs.

41. During the course of the instant action, additional contributions and/or delinquency charges may become known to be due and owing. If Defendants fail to pay the contributions and/or delinquency charges, as part of this action, at the time of trial or judgment, whichever is later, those additional amounts should be included.

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

(a) Against all Defendants jointly and severally in the minimum contribution amount of $44,641.30 for the period May 2, 2012 through December 31, 2014, plus interest and liquidated damages as set forth in the Trade Agreement and as mandated by Section 502 (g)(D) of ERISA, 29 U.S.C. Section 1132 (g)(2)(D);

(b) Against all Defendants jointly and severally, for payment of attorneys' fees, auditors' fees, court costs and disbursements as set forth in the Trade Agreement and as mandated by Section 502 (g)(D) of ERISA, 29 U.S.C. Section 1132 (g)(2)(D);

(c) Damages in the amount of any additional contributions and/or delinquency charges which may become due and owing during the course of the instant action which amount shall include the principal, plus interest and liquidated damages; and

(d) For such other and further relief as the Court deems appropriate.

Dated: Elmsford, New York
November 16, 2016

Respectfully submitted,

BARNES, IACCARINO, & SHEPHERD, LLP

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